

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

<p>In re: <i>23ANDME HOLDING CO.</i>, et al.,</p> <p>Debtors.</p> <p>CENTER FOR APPLIED VALUES AND ETHICS IN ADVANCING TECHNOLOGIES (CAVEAT), et al. (Amici Curiae)</p> <p>Appellants/Movants</p> <p>v.</p> <p><i>23ANDME HOLDING CO.</i>, et al.,</p> <p>Appellees/Respondents</p>	<p>Case No. 25-40976 Chapter 11 (Jointly Administered)</p> <p>Case No. 4:25-cv-00999 (consolidated 4:25-cv-01001 and 4:25-cv-01002)</p>
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**CENTER FOR APPLIED VALUES AND ETHICS IN ADVANCING TECHNOLOGIES’  
ERRATA TO MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR STAY  
PENDING APPEAL OF ORDER APPROVING SALE OF DEBTORS’ ASSETS**

COME NOW the Center for Applied Values and Ethics in Advancing Technologies (“CAVEAT”) and individuals listed in Exhibit A (“Movants”) and file this Errata to their Memorandum in Support of Emergency Motion for Stay Pending Appeal of Order Approving Sale of Debtors’ Assets (the “Memo”).

Multiple individuals comprising Movants were involved in the drafting of the Memo. There were severe time constraints. A drafter/editor among Movants misconstrued paraphrased conclusions of another drafter about the Ombudsmen’s findings as if they were the Ombudsman’s actual statements in the Ombudsman’s Report. Additionally, there was some confusion on the page

numbers of the Ombudsman's report distinct from the page numbers of the report that was filed on the court record.

The erroneous quotes are stricken and corrected as follows:

**STRICKEN:**

~~Page 2, under “I. Likelihood of Success on the Merits” section, Movants quoted the Ombudsman as saying: “The Sale cannot lawfully proceed without new notice and re-consent from affected customers” CPO Report, Bankr Doc. 718 at pp. 108-110.~~

**CORRECTED:**

**Page 2, under “I. Likelihood of Success on the Merits” section should read:**

**“Based upon his examination, the CPO cannot conclude with certainty that the sale of the Company’s data in bankruptcy is otherwise consistent with its privacy policies, particularly for those customers who created their accounts before the 23andMe Privacy Statement was amended in June 2022 to expressly note the potential for a sale of customer data in bankruptcy.” — CPO Report, p. 7 / (Docket 718) p. 10 of 211**

**STRICKEN:**

~~Page 3, under Section “II. Irreparable Harm,” it states: “The Bankruptcy Court stated that “any injury to consumers could be reparable, as a consumer could delete their accounts.” (Doc. 908 at 18; Tr. July 7, 2025, p. 4);~~

**CORRECTED:**

**The Bankruptcy Court implies that any injury to consumers could be repaired as the “enhancements include the adoption in perpetuity of the Debtors’ policies permitting customers to delete their accounts, delete their data, and opt out of research”**

**Memorandum Order, p. 17.**

**STRICKEN:**

~~Page 3, under Section “A. Deleting an Account ≠ Deleting Genetic Data” it reads: “Deleting a user’s account does not necessarily delete the genetic data... Customers often misunderstand what ‘deletion’ entails.” CPO Report, Doc. 718 at 108–109.~~

**STRICKEN:**

~~On page 4, under section, “B. DNA Reveals — And Implicates — Relatives Who Never Consented,” it reads “One person’s genetic information inevitably reveals medically significant data about their family members...” CPO Report, Doc. 718 at p. 84–~~

**CORRECTED:**

**. A person who shares their genetic data with another is also sharing a significant fraction of the genetic data of their mother, father, siblings, and children, and of other blood relatives to a lesser degree. This can include information about ancestry, susceptibility to disease, and other factors.” CPO Report, (Doc 718) p. 45.**

**STRICKEN:**

~~Page 6, under “I.V. Public Interest” Movants quoted the Ombudsmen: “Consumers were repeatedly assured that they were in control of their genetic information”., Doc. 718,– (Ombudsmen Report) p. 33~~

**CORRECTED::”the Company’s customer directed communications and customer facing representations are replete with promises about both the importance with which it treats**

**privacy and how it tells customers that it puts them in control with revocable choices about your data”.: CPO Report (Doc 718 ). P.38.**

**STRICKEN:**

~~Also on page 6, under “Public Interest” Movants quoted the Ombudsmen: “In his report, CPO Neil Richards articulated that this sale was not compliant with the privacy policies” Doc. 718 (Ombudsmen Report), p.108.~~

**CORRECTED:**

**“Based upon his examination, the CPO cannot conclude with certainty that the sale of the Company’s data in bankruptcy is otherwise consistent with its privacy policies, particularly for those customers who created their accounts before the 23andMe Privacy Statement was amended in June 2022 to expressly note the potential for a sale of customer data in bankruptcy.” CPO Report, (Doc. 718) p. 7/ (Docket 718) p. 10 of 211.**

With the benefit of review, the Ombudsman’s conclusions that Movants wished to reference are more appropriately gleaned from the Report CORRECTIONS above and as follows:

- (i) **Applicable Laws Requiring RE-Consent:** “there may be other legal theories under which the sale of the Company’s genetic data in particular violates applicable non-bankruptcy laws, at least in the absence of express consent from the Company’s customers....While the CPO is not necessarily in a position to evaluate this legal theory given its novelty, he also cannot reject it outright based on the information provided earlier about the unique sensitivities associated with genetic data, including the scientific reality that genetic data is not just sensitive date about people-in a very real sense, it *is* people.” BR Doc. 718 (Ombudsman Report), p. 103-104
- (ii) **Debtor’s Privacy Policy:** “In the opinion of the CPO, such disclosures [by

23andMe in various policies] do not clearly disclose to a reasonable consumer the possibility that their customer data (and potentially including their biospecimens or genomes) could be sold or transferred to another company in bankruptcy. Ombudsmen Report, (BR doc 718) p. 40-41.

Respectfully submitted,

**BECK & SANT, LLC**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this document was filed electronically with the United States District Court and has been served on the parties in interest via email by the Court's CM/ECF system this 9<sup>th</sup> day of July 2025.

/s/ John Talbot Sant, Jr.

# **Exhibit A**

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